



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

June 15, 2017

Ms. Molly Cagle, Counsel  
Baker Botts LLP  
98 San Jacinto Blvd., Suite 1500  
Austin, Texas 78701

Re: Corpus Christi Drinking Water Incident of December, 2016  
May 11, 2017 Meeting with EPA and Ergon

Dear Ms. Cagle:

Thank you for meeting with representatives of the Environmental Protection Agency ("EPA") at our office in Dallas, Texas on May 11, 2017. We found the meeting to be very helpful and informative concerning the events that led to the drinking water advisory ban imposed by the City of Corpus Christi, Texas in December of 2016. This letter is intended to memorialize our understanding of your presentation of information on behalf of ~~the~~ Ergon Asphalt and Emulsions, Inc. ~~facility~~ ("Ergon") ~~in Corpus Christi, Texas~~. Of course, if there is anything in this letter that portrays a misunderstanding of your presentation, please do not hesitate to contact me for correction. At the meeting, you provided certain factual statements which this letter attempts to memorialize in the paragraphs below.

The Ergon facility in Corpus Christi, Texas leases a corner of the property owned by the Valero ~~Asphalt Plant~~ ("~~Valero~~" Marketing & Supply Company<sup>1</sup> ("Valero") (the property leased by Ergon is referred to as the "Leased Property") and has been leasing it from Valero since taking over the facility from ~~Koch~~. ~~Part of Ergon's lease agreement includes Ergon's obligation to pay Valero on a monthly basis for the use of water Ergon's facility uses.~~ the Sem Materials Group, who succeeded<sup>2</sup> Koch as the operating entity on the Leased Property.<sup>3</sup> Ergon's facility produces emulsion products for its customers. Its facility includes four staff, including one facility manager.

Valero receives water from the City of Corpus Christi, Texas (the "City") from a two-inch (2") diameter water line connected to an eight-inch (8") diameter water line (the "Connection"). The eight-inch water line runs parallel to and along Up River Road and eventually dead ends several hundred yards to the southeast of ~~Ergon's facility~~ the Valero property.<sup>4</sup> The eight-inch line

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<sup>1</sup> Wrong entity

<sup>2</sup> Correction

<sup>3</sup> The lease agreement entitles Ergon to receive, use and enjoy...water..."at Ergon's expense", but does not specify that Ergon should pay Valero, nor establish a monthly pay period.

<sup>4</sup> Clarification

connects further upstream of ~~Ergon's facility~~ the Valero property<sup>5</sup> to one of the ~~city~~ City's main 24" diameter water lines, which also runs parallel to and along Up River Road. Situated within Valero's property, ~~the two-inch water line includes a downgradient of the Connection, is a~~<sup>6</sup> three-way "chicken foot" ~~connection of water pipes in which~~ two water pipes branch out to ~~Valera~~ Valero's facility while the third water pipe ~~branches out to Ergon's facility~~ extends to the Leased Property.

The water meter that the City ~~of Corpus Christi~~ uses to measure the amount of water used is situated on Valero's property. ~~There is a separate water meter at Ergon's facility that measures the amount of water Ergon's facility uses. Ergon does not receive an invoice/bill from the City of Corpus Christi, Texas for the use of water. Instead, Valero handwrites to Ergon its~~ Valero is the sole customer at the service address 6746 Up River Road. Valero receives a monthly water bill from the City and pays the bill directly to the City.<sup>7 89</sup>

Pursuant to the lease between Valero and Ergon, Ergon has the right to receive, use and enjoy utility service at the Leased Property, including water, at Ergon's expense.<sup>10</sup> Although the lease is silent about utility payments, since the execution of the lease, Ergon has ~~not receive an invoice/bill from the City~~ for its use of water at the Leased Property. Instead,<sup>11</sup> Valero has invoiced Ergon monthly for a portion of the monthly water bill Valero receives from the City<sup>12</sup>; Ergon understands the invoiced amounts to be based in part on the readings taken by Valero at the separate water meter situated on Valero property<sup>13</sup> that measures the amount of water Ergon uses. Ergon pays Valero directly the invoiced amount. At the meeting, Ergon provided to EPA copies of Valero handwritten notes on City bills to Valero showing Ergon's portion of costs towards the water invoice/bill Valero receives from the City ~~of Corpus Christi, Texas, and Ergon pays Valero its portion of the bill.~~<sup>14</sup>

On or about November 21 or 22, December 1 and December 6, Valero notified Ergon and the City ~~of Corpus Christi~~ of discoloration and/or soapy water problems with ~~Valera~~ Valero's drinking water. ~~However, the city~~ The City never contacted Ergon on those dates<sup>15</sup>. Each time, the ~~city~~ City flushed the system and the water cleared up. On December 12, Valero again contacted Ergon about ~~drinking water problems at its facility, at which time Ergon sent company staff to investigate. At the same time, the City of Corpus Christi contacted~~ cloudy water coming out of the faucet at the Valero Administration Building.<sup>16</sup> Meanwhile, representatives of the City showed up at the Valero

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<sup>5</sup> Correction

<sup>6</sup> Clarification

<sup>7</sup> Correction

<sup>8</sup> Moved and corrected as to location of the meter

<sup>9</sup> Moved

<sup>10</sup> See Footnote 3

<sup>11</sup> Clarification

<sup>12</sup> Added to clarify and replace deleted sentence on page 1

<sup>13</sup> Correction

<sup>14</sup> Moved and revised to clarify Ergon pays to Valero the amount directed by the Valero invoice

<sup>15</sup> We have no records that there were communications between the City and Ergon employees on these dates

<sup>16</sup> Clarification

Administration Building, and the City flushed the lines. <sup>17</sup>On or about December 12, Ergon's company staff discovered that there was no backflow preventer on the Connection and none of the lines extending from the chickenfoot on Valero's property had a backflow preventer. Upon further inspection, Ergon made arrangement for installation of a back-flow preventer on Valero's property on the 2" line that extended to the Leased Property. On December 14, 2016, the Texas Commission on Environmental Quality ("TCEQ") ~~about the drinking water issues. On or about December 13, Ergon's company staff discovered Ergon's two-inch water line did not have a back-flow preventer and immediately installed one along with check valves. Around the same time, the City of Corpus Christi~~ arrived. The installation of backflow preventers was discussed with the City and TCEQ and on that same date, backflow preventers were installed (all by the same plumbing company) on all three pipes branching out of the chickenfoot. Those systems were certified on December 15, 2016.<sup>18</sup>

Late December 14, the City issued a city-wide drinking water advisory ban. The city ~~altered the advisory ban to limit its geographic scope and then~~ <sup>19</sup>lifted the advisory a few days later ~~once~~ after it secured sampling results ~~that~~ indicated no detection of a product known as Indulin AA-86. Ergon uses Indulin AA-86 as ~~a~~the surfactant ~~in the soap solution it uses~~ for ~~one~~three of nine (9) products it makes at its facility. ~~This particular product is the only one that needs water during its manufacture~~Both water and soap solution were run to the mill seals on December 12 during a batch of one of these three products. Ergon believes that ~~on December 12, 2016~~<sup>20</sup>, the soap solution containing Indulin AA-86 may have gotten into ~~its~~the two-inch water line ~~serving the Leased Property, back to the chickenfoot and traveled to Valero's two other water lines after it discovered a water hose from its two-inch line was inadvertently left connected to its manufacturing process. up one or both of the other two-inch lines to Valero.~~ Ergon has since ~~disconnected~~completely flanged off<sup>21</sup> the water hose ~~connection~~at issue so that it can no longer be used. Ergon also stopped manufacturing ~~the product~~products that ~~uses~~use Indulin AA-86 at this facility. ~~In addition, Ergon contracted with a plumber to install a backflow preventer on the Leased Property. That backflow preventer was certified on February 27, 2017~~<sup>22</sup>.

Ergon ~~believes~~estimates that approximately 1060 gallons of ~~water containing approximately 3 gallons of hydrochloric acid and approximately 7 gallons of Indulin AA-86~~cationic soap solution may have escaped through the water hose connection and into ~~its~~the two-inch line. ~~serving the Leased Property. Extrapolating from the ratios of Indulin AA-86 and HCl provided on the batch sheet for December 12, 2016, Ergon estimates that hydrochloric acid made up approximately 3 gallons and Indulin AA-86 approximately 7-8 gallons of the 1060 gallons of soap solution that may have backflowed. The remainder of the solution was water.~~<sup>23</sup> However, Ergon asserts that ~~none of its product~~it is highly unlikely that the soap solution containing Indulin AA-86 would

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<sup>17</sup> Ergon was not privy to this communication

<sup>18</sup> Added detail for clarification

<sup>19</sup> Added detail for clarification

<sup>20</sup> Clarification

<sup>21</sup> Clarification

<sup>22</sup> Added to show the extent of actions to address issue.

<sup>23</sup> Replaced for clarification with information in 104(e)

have left Valero's property because the water pressure from the 8" ~~city~~City water line is generally too great to allow that to happen.

The above illustrates a brief summary of our understanding of the information you shared with us during our May 11, 2017 meeting. We greatly appreciate the time and effort you and your colleagues put forth for the meeting. If you have any questions, or if you find any facts above to be incorrect, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Edwin Quinones". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edwin Quinones  
Assistant Regional Counsel

Document comparison by Workshare Compare on Wednesday, July 19, 2017  
3:27:40 PM

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Document 2 ID	file:///client/c\$/users/mcsmith/Desktop/Corrected EPA Letter version 2.docx
Description	Corrected EPA Letter version 2
Rendering set	Standard

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Moved to	3
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